

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 18111
[REDACTED]	)	
Petitioners.	)	DECISION
	)	
	)	

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On April 1, 2004, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing additional income tax and interest for the taxable years 2000 through 2002 in the total amount of \$4,534.

On June 3, 2004, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing and have provided only the information presented with their protest letter. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers timely filed their 2000, 2001, and 2002 Idaho individual income tax returns. The Income Tax Audit Bureau (Bureau) reviewed those returns and found the taxpayers claimed a deduction for retirement benefits on each return. The Bureau determined the taxpayers did not qualify for the retirement benefits deduction, so the Bureau adjusted the taxpayers' returns. In addition to the adjustment for the retirement benefits deduction, the Bureau added interest to the taxpayers' tax deficiency.

The Bureau sent a Notice of Deficiency Determination to the taxpayers. The taxpayers responded that they accepted the tax correction but protested the addition of interest on the deficiency. The taxpayers stated they do not feel the interest charges are warranted because they filed their returns electronically through the AARP Tax-Aide program; all information was honestly provided to the preparer; the software program was approved by the state; and, if they would have been told taxes were owed, they would have paid them when filing their returns and

not incurred any interest. The taxpayers also provided a letter from the State Coordinator of the AARP Tax-Aide Program. He stated it was his belief that the software, approved by the State Tax Commission, omitted an age test for civil service and military retirement benefits. Consequently, the taxpayers' returns were prepared incorrectly. He stated the Tax Commission should waive the interest because the error was not the fault of the taxpayers or the tax preparer.

Idaho Code section 63-3045 provides for the addition of interest to any tax deficiency. The specific wording of the Idaho Code is "interest upon any deficiency shall be assessed." The addition of interest has also been addressed in the courts. In hearing Union Pacific R. Co. v. State Tax Com'n, 105 Idaho 471, 670 P.2d 878 (1983), the Idaho Supreme Court addressed whether the taxpayer was required to pay interest, stating:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest ... shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute.

Accordingly, the Tax Commission finds interest is a statutory addition to tax deficiencies of which the Tax Commission has no discretion. Therefore, the Tax Commission must uphold the addition of interest to the taxpayers' tax deficiency.

WHEREFORE, the Notice of Deficiency Determination dated April 1, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$1,332	\$336	\$1,668
2001	1,324	232	1,556
2002	1,359	150	<u>1,509</u>
		TOTAL DUE	<u>\$4,733</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is included with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

#### CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

[Redacted]